

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-555

September 19, 2000

PUBLIC UTILITIES COMMISSION
Amendments to Chapter 520
Unscheduled Tour, Charter and Water Taxi
Services in Casco Bay

ORDER ADOPTING
AMENDED RULE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION

In this Order, we amend certain parts of Chapter 520, the rule that governs tours, charters, and water taxis in Casco Bay to make the rule consistent with the provisions of 35-A M.R.S.A. §§ 5101-D and 5101-E. The rule also includes a new application form for use by all persons seeking to provide these services.

In 1992, the Legislature amended Chapter 51 of Title 35-A M.R.S.A., relating to the regulation of ferries in Casco Bay (1992 amendments). One of the amendments, section 5101-D, added requirements for obtaining a certificate of public convenience and necessity for unscheduled freight service between mainland Cumberland County and Peaks Island, Great Diamond Island, Little Diamond Island, Long Island, Chebeague Island, and Cliff Island, or between these islands. The original 1992 amendments included a sunset provision in 35-A M.R.S.A. § 5111, which provided for the repeal of section 5101-D on July 15, 1996. This sunset provision was itself repealed in 1995 (See P.L. 1995, ch. 559, § 1), and therefore, section 5101-D continues to govern the provision of unscheduled freight service in Casco Bay. We opened this rulemaking to amend Chapter 520 to reflect the statutory provisions contained in section 5101-D of Title 35-A. We also proposed a form to be used by entities applying for authorization to provide charter, water taxi or unscheduled freight services in Casco Bay.

II. RULEMAKING PROCESS

On July 17, 2000, we issued a Notice of Rulemaking and proposed rule. Consistent with rulemaking procedures, we provided interested persons an opportunity to submit comments on the proposed rule. Lionel Plante Associates (Lionel Plante) and Casco Bay Island Transit District (CBITD) provided comments. These comments are discussed below. The Public Advocate filed a letter stating he did not object to the proposed amendments.

III. DISCUSSION OF INDIVIDUAL SECTIONS

A. Section 2: Definitions

The only proposed change to this section was a definition of the term “freight service.” Freight service is defined as any commercial waterborne transportation of goods. No one commented on this definition.

CBITD suggested that we add the definition of “Roll-On and Roll-Off Vehicle,” as used in section 6 of the proposed rule. We agree with this suggestion and have included the suggested definition in the Final Rule.

CBITD also suggested several editorial changes concerning capitalization and consistent usage of the term “unscheduled” and we have incorporated these throughout the Final Rule.

B. Section 6: Limitations on the Provision of Unscheduled Freight Service

As required by 35-A M.R.S.A. § 5101-D, Section 6 of the rule describes the limitations applicable to Unscheduled Freight Services. The rule defines the types of vehicles and the type of freight allowed under the statute as well as provisions for rate schedules, loading and unloading restrictions, and limitations specific to Peaks Island deliveries.

For purposes of clarity, CBITD suggested a rewrite of Section 6 of the Proposed Rule including moving the definition of “Roll-On and Roll-Off Vehicle” to the definition section of the Rule. We have incorporated these suggestions into the Final Rule. Minor edits were also made to sections 6(C) and 6(E).

C. Section 7: Waiver

Section 7 of the Proposed Rule provides the standard conditions for the Commission to waive the requirements of the rule for good cause shown. CBITD requested that it receive notice of any waiver request associated with this rule. The waiver section is standard language used in all Commission rules. We will not include a specific requirement related to CBITD. However, we note that waivers are highly unlikely since virtually all of the major provisions of the rule are mandated by statute.

D. Application for Authorization to Provide Charter, Water Taxi, or Unscheduled Freight Services in Casco Bay

The application for authorization was created to simplify the process for persons seeking to operate Charter, Water Taxi or Unscheduled

Freight Services in Casco Bay. It was drafted to incorporate all the requirements of the statute and to provide all relevant information to interested parties.

Lionel Plante was concerned that the proposed application was burdensome as it appeared to require pre-transport approval for each trip carrying unscheduled freight. We did not intend such a requirement, and we have amended the application to require a general description of the type of freight services to be provided, rather than a per-trip account of the type and weight of the cargo.

It should also be noted that Lionel Plante received authorization from the Commission in 1992 to carry unscheduled freight and he, along with several other holders of authorization, are not required to file for re-authorization under this rule, unless there are changes in the services being provided.

We have also incorporated several editing suggestions on the application made by CBITD.

Accordingly, we

O R D E R

1. That the attached Chapter 520, Tour, Charter, Water Taxi and Unscheduled Freight Services in Casco Bay is hereby adopted;
2. The Administrative Director shall send copies of this Order and the attached Rule to:
 - a. Casco Bay Island Transit District;
 - b. All entities on the Commission's water common carriers list;
 - c. All persons who have filed a written request with the Commission within the last year for Notice of Rulemaking;
 - d. All commenters in this Docket;
 - e. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053;
 - f. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies), and
3. That this Order will also be posted on the Commission's web site at www.state.me.us/mpuc.

Dated at Augusta, Maine, this 19th day of September, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond